

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHNNY DELUIS-MORELO,

Petitioner,

Case No. C15-1097-RAJ-BAT

V.

ICE FIELD OFFICE DIRECTOR,

Respondent.

REPORT AND RECOMMENDATION

Johnny DeLuis-Morelo, an immigration detainee at the Northwest Detention Center, is proceeding *pro se* in this habeas corpus action pursuant to 28 U.S.C. § 2241. He seeks release from detention or a bond hearing. *See* Dkt. 7. Respondent has been served, and her return and status report is due on August 28, 2015. Dkt. 8.

On August 13, 2015, Mr. DeLuis-Morelo filed a motion titled “Urgent Mental Health Treatment.” Dkt. 10 at 4. He alleges that he has not received mental health treatment and has been abused while at the Northwest Detention Center. *Id.* at 5. He claims that the medicine he has received for his schizophrenia “is not good for my baby,” but perhaps he means “body,” instead of “baby.” *Id.* at 6. He asks the Court to release him on conditional parole or to a mental health facility. *Id.* at 7.

The Court recommends that Mr. DeLuis-Morelo's motion be denied. First, Mr. DeLuis-

1 Morelo has been detained since June 2012, and it does not appear that the matter is as urgent as
2 he suggests. Second, the instant habeas action involves the legality of Mr. DeLuis-Morelo's
3 detention, not the conditions of his confinement. His motion, however, goes exclusively to the
4 conditions of his confinement and seeks injunctive relief beyond the scope of his habeas petition,
5 namely release to a mental health treatment facility. Although the Supreme Court has not
6 addressed whether a challenge to a condition of confinement may be brought under habeas, *see*
7 *Bell v. Wolfish*, 441 U.S. 520, 526 (1979), the Ninth Circuit has held that habeas jurisdiction is
8 absent, and a civil rights action is proper, where, as here, a successful challenge to a prison
9 condition will not necessarily shorten the detention, *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th
10 Cir. 2003). In addition, the preferred practice in the Ninth Circuit has been that challenges to
11 conditions of confinement be brought in a civil rights complaint. *See Badea v. Cox*, 931 F.2d
12 573, 574 (9th Cir. 1991) (holding that civil rights action is proper method of challenging
13 conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891-92 & n. 1 (9th Cir. 1979)
14 (affirming dismissal of habeas petition on basis that challenges to terms and conditions of
15 confinement must be brought in civil rights complaint). Accordingly, Mr. DeLuis-Morelo's
16 request for mental health treatment should be brought in a separate civil rights action, not in this
17 habeas action, and his urgent motion, Dkt. 10, should be **DENIED**. A proposed order
18 accompanies this Report and Recommendation.

19 This Report and Recommendation is not an appealable order. Therefore a notice of
20 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
21 assigned District Judge enters a judgment in the case. Objections, however, may be filed and
22 served upon all parties no later than **September 14, 2015**. The Clerk should note the matter for
23 **September 14, 2015**, as ready for the District Judge's consideration if no objection is filed. If

1 objections are filed, any response is due within 14 days after being served with the objections. A
2 party filing an objection must note the matter for the Court's consideration 14 days from the date
3 the objection is filed and served. The matter will then be ready for the Court's consideration on
4 the date the response is due. Objections and responses shall not exceed eight pages. The failure
5 to timely object may affect the right to appeal.

6 DATED this 24th day of August, 2015.

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8 BRIAN A. TSUCHIDA
9 United States Magistrate Judge

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